IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO.268 OF 2004

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State Bank of Saurashtra ...Petitioner

v/s.

Smt.Supriya Milind Soman
and anr. ...Respondents

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Mr.J.P. Cama with Mr.N. Engineer i/b Negandhi Shah & Himayatullah for the Petitioner.

Mr.V.P.Vaidya for Respondent No.1.

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CORAM: D.K.DESHMUKH, J.

DATED: 26TH JULY, 2006

P.C.:

1. I have heard the learned Counsel for both sides. The learned Counsel appearing for both sides are agreed that the Respondent No.1 can not claim provident fund as well as pension. The contribution to the provident fund to which the Respondent No.1 could be entitled to if she does not claim pension would be Rs.1,52,745/-. It is also an admitted position that she has received equivalent amount under the interim order passed by this Court.

2. It appears that in view of the aspect of adjudication involved, the order for payment of pension could not have been made by the Court under Section 33(c)(ii) of the Industrial Disputes Act. Therefore, the learned Counsel appearing for the Respondent No.1 made a request that the Respondent No.1 should be permitted to withdraw her application filed under Section 33(c)(ii) with liberty to approach appropriate court seeking appropriate reliefs. This request is not opposed by the learned Counsel appearing for the Petitioner.

3. Taking overall view of the matter, therefore, in my opinion, following order would meet the ends of justice.

O R D E R

(i) The application filed by the Respondent No.1 under Section 33(c)(ii) of the Industrial Disputes Act is permitted to be withdrawn with liberty to the Respondent No.1 to adopt appropriate proceedings;

(ii) The amount that has been received by the Respondent No.1 pursuant to the interim order passed by this Court is permitted to be retained by her subject to her filing an undertaking within two weeks from today undertaking to this court to repay the amount to the Petitioner with interest at the rate of 9% p.a., in case it is held by the appropriate court that the Respondent No.1 is entitled to pension. It goes without saying that in case the appropriate court holds that the Respondent No.1 is not entitled to pension, the amount received by her pursuant to the interim order passed by this Court can be appropriated by her towards full payment of provident

fund.

(iii) The learned Counsel appearing for the Respondent No.1 states that he will adopt appropriate proceedings with due notice to the Petitioner within a period of eight weeks from today.

Statement is accepted.

(iv) As a consequence of withdrawal of the application filed under Section 33(c)(ii) by the Respondent No.1, the order passed by the Labour Court on that application does not survive rendering this petition as infructuous. Disposed of as such.

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